IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2003

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.No.155 of 2003
and
C.M.P.No.1646 of 2003

E.Seetharama Reddiar .. Petitioner

-Vs-

S.Jayaraman .. Respondent

This civil revision petition is preferred under S.115 of The Code of Civil Procedure against the order and decree passed in I.A.No.166/01 in A.S.S.R.No.54/01 on the file of the Subordinate Judge, Kulithalai dated 18.7.2002.

!For Petitioner : Mrs.V.J.Latha
for M/s.M.Suresh Kumar

^For Respondent : No appearance

:ORDER
There was no representation, when the matter was taken up by this Court. Heard the learned Counsel for the petitioner.
2. What is challenged herein is an order of the learned Subordinate Judge, Kulithalai allowing an application to condone the delay of 41 days in preferring an appeal.
3. It was a suit filed by the petitioner herein for recovery of possession and other reliefs. It was contested by the respondent herein. But, the suit was decreed in favour of the petitioner. Aggrieved respondent/defendant has preferred the instant appeal. But, while doing so, there was a delay of 41 days. The reason that was adduced by the defendant/appellant was that he was absent at Australia, and hence, he could not know the final proceedings in the suit; that after his return from abroad, he came to know about the same, and in such circumstances, there was delay of 41 days in filing the appeal, and hence, he has filed the instant application to condone the said delay.
4. What was contended by the revision petitioner's side before the Court below and equally here also is that the delay was not explained by the petitioner in any way. Added further the learned Counsel for the petitioner that the lower Court has taken the delay as only 8 days, while the respondent himself has stated in the affidavit as well as in the petition the delay as 41 days, and this fact has influenced the lower Court to allow the application

even when the delay was not explained.
5. The Court is unable to notice any merit or substance in this revision. Even assuming that a delay of 41 days was caused, in view of the reasons adduced by the respondent, the Court is of the view that such delay is neither inordinate nor inexcusable, and the same has got to be condoned. The lower Court has allowed the application without awarding costs. But, this Court is of the opinion that a direction should be given to the respondent to pay costs to the petitioner.
6. Therefore, the respondent is directed to pay a costs of Rs.1,000/- to the petitioner within a period of four weeks from the date of receipt of copy of this order, failing which I.A.No.166 of 2001 shall stand dismissed automatically. With this modification, this civil revision petition is dismissed, leaving the parties to bear their own costs. Consequently, connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

The Subordinate Judge, Kulithalai.

nsv/

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